

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM****SUBJECT:** Kohler/Lee property**DEPARTMENT:** County Attorney's Office**DIVISION:** Litigation**AUTHORIZED BY:** Lola Pfeil**CONTACT:** Sharon Sharrer**EXT:** 7257**MOTION/RECOMMENDATION:**

Kohler/Lee property. Authorize the issuance of an Offer of Judgment for Parcel Numbers 112/712 and 113/713 of the County Road 15 road improvement project for the Defendants, Stephen G. Kohler, Douglas C. Lee, Turfmaster Lawn & Ornamental Care, Inc., and Control Pest Management, LLC, jointly and severally, in the amount of \$145,000.00 exclusive of statutory interest, attorney's fees and costs reimbursements. Also, authorize a \$25,000.00 counteroffer to Turfmaster's amended business claim in the amount of \$598,061.00. Judge Galluzzo.

District 5 Brenda Carey

Bob McMillan

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**BACKGROUND:**

see attached

**STAFF RECOMMENDATION:**

Staff recommends the Board authorize the issuance of an Offer of Judgment for Parcel Numbers 112/712 and 113/713 of the County Road 15 road improvement project for the Defendants, Stephen G. Kohler, Douglas C. Lee, Turfmaster Lawn & Ornamental Care, Inc., and Control Pest Management, LLC, jointly and severally, in the amount of \$145,000.00 exclusive of statutory interest, attorney's fees and costs reimbursements. Also, authorize a \$25,000.00 counteroffer to Turfmaster's amended business claim in the amount of \$598,061.00.

**ATTACHMENTS:**

1. Kohler/Lee property

<b>Additionally Reviewed By:</b> No additional reviews
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COUNTY ATTORNEY'S OFFICE  
MEMORANDUM

To: Board of County Commissioners

Through: Matthew G. Minter, Deputy County Attorney *Matthew G. Minter*

From: David G. Shields, Assistant County Attorney  
Ext. 5736 *David G. Shields*

Concur: Pam Hastings *P. Hastings* Administrative Manager/Public Works Department

Date: May 2, 2008

Subject: (1) Authorization to Issue Offer of Judgment  
(2) Authorization to Respond to Amended Business Claim  
County Road 15  
Parcel Nos. 112/712 and 113/703  
Property owners: Stephen G. Kohler and Douglas C. Lee  
Business Tenants: Turfmaster Lawn & Ornamental Care, Inc. and  
Control Pest Management, LLC  
Seminole County v. Seminole Co. State Road 46, Ltd., et al  
Case No. 2007-CA-1605-101C-13-L

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This Memorandum requests authorization by the Board of County Commissioners ("BCC") to issue an Offer of Judgment for Parcel Nos. 112/712 and 113/713 on County Road 15 as to Defendants, Stephen G. Kohler, Douglas C. Lee, Turfmaster Lawn & Ornamental Care, Inc. and Control Pest Management, LLC, in the total amount of \$145,000.00 exclusive of statutory interest, attorney's fees and costs reimbursements.

This Memorandum also requests authorization by the BCC to respond to the amended business damage claim of Turfmaster Lawn & Ornamental Care, Inc. ("Turfmaster") on County Road 15 in the amount of \$598,061.00 with a counteroffer of \$25,000.00.

Turfmaster is the property owners' business located on Parcel Nos. 112/712 and 113/713. It is a commercial landscaping spray business. Turfmaster made its business damage claim of \$1,222,940.00 exclusive of statutory interest, attorney's fees and costs reimbursement on May 2, 2007. By statute, the County was required to accept or reject the claim or submit a counteroffer within 120 days after receipt of the claim. The owners' attorney agreed to extend the statutory deadline for the County's response from August 31, 2007 to October 1, 2007, but not by any further length of time.

Upon receipt of the business damage claim, the County retained an expert, a certified public accountant. Based on the direction of the BCC and the advice of this expert, the County rejected Turfmaster's initial offer without a counteroffer last October.

On February 21, 2008, the owners' attorney forwarded an amended business damage claim, about half the amount of the first one, i.e., \$598,061.00. The amended claim also revealed that Turfmaster made material omissions in its initial offer. Specifically, Turfmaster omitted a disclosure that it had included income from locations in Orlando and Tampa in addition to the Sanford location, in calculating its initial offer. Including these other locations improperly inflated Turfmaster's claim. Turfmaster hid this information from the County at the time.

The County's expert now recommends payment of \$13,400.00 to settle business damages representing the disruption to the business caused by the road widening. For purposes of determining attorney's fees, the eminent domain statute allows the County another 90 days to submit another counteroffer from receipt of information showing the first offer contained material omissions, i.e., the Orlando and Tampa locations.

## **I      PROPERTY**

### **A.      Location Data for Parcel Nos. 112/712 and 113/713**

The subject parcels are located along the west side of County Road 15 north of unpaved Narcissus Avenue in a portion of unincorporated Seminole County. A location map is attached as Exhibit A and a parcel sketch as Exhibit B.

### **B.      Street Addresses**

The street address for Parcel Nos. 112/712 is 348 Monroe Road, Sanford, FL and the address for Parcel Nos. 113/713 is 370 Monroe Road, Sanford, FL.

### **C.      Description**

Parcel Nos. 112/712. The parent tract consists of 50,094 square feet and is improved with a house that has been converted to an office.

Parcel Nos. 113/713. The parent tract consists of 34,987 square feet and is improved with several small buildings and an unpaved parking area.

## **II      AUTHORITY TO ACQUIRE**

The BCC adopted Resolution No. 2006-R-114 on May 9, 2006, authorizing the acquisition of Parcel Nos. 113/713 and adopted Resolution No. 2007-71 on April 10, 2007 authorizing the acquisition of Parcel Nos. 112/712.

Both resolutions find that the County Road 15 is necessary, serves a public purpose and is in the best interests of the citizens of Seminole County. The Order of Take occurred on August 13, 2007, with title to Parcel Nos. 112 and 113 and the right to use Parcel Nos. 712 and 713 vesting in Seminole County on August 21, 2007, the date of the good faith deposit.

### **III ACQUISITION/REMAINDER**

As to Parcel Nos. 112/712, the fee taking was 6,526 square feet and is a rectangular strip of land taken from the subject's frontage on C15. The acquisition left a remainder of 43,568 square feet. The temporary construction easement ("TCE") is 78 square feet and is located along the east boundary of the subject boundary and is for the construction of drainage inlet S-123. The parent tract for Parcel Nos. 112/712 is improved with a house that has been converted to an office.

As to Parcel Nos. 113/713, the fee taking is 5,367 square feet and is a rectangular strip of land that will be taken from the subject's frontage on C15. The acquisition left a remainder of 29,620 square feet. The TCE is 137 square feet and is located along the east boundary of the subject parcel and is for blending the new right-of-way with the access driveway on the remainder property. The parent tract for Parcel Nos. 113/713 includes a parking area for commercial trucks, a couple of small Quonset hut-like structures and some other small structures.

### **IV APPRAISED VALUES**

#### **County Reports:**

The County's initial appraised value of Parcel Nos. 112/712 was \$47,500.00 (\$47,200.00 for the fee and \$300.00 for the TCE) and for 113/713 was \$39,600.00 (\$39,200.00 for the fee and \$400.00 for the TCE). The County's appraisal was prepared by Florida Realty Analysts, Inc., and was approved by the County's MAI designated staff appraiser. The appraisal was updated for the order of taking hearing. The value did not change as to Parcel Nos. 112/712, but it did change as to Parcel No. 113, to \$40,600.00 resulting in a total value for Parcel Nos. 113/713 to be \$41,000.00. The appraisal reports only appraise the land, improvements, and possible severance damages. The appraisal reports do not encompass business damages.

#### **Owner Reports**

The owners' reports were prepared by Bradley J. Pierson with Pierson Appraisal Group with the value of the parcels as of August 27, 2007. The appraisal report for Parcel Nos. 112/712 opined the value for Parcel No. 112 at \$89,505.00 and \$375.00 for Parcel No. 712. Mr. Pierson valued Parcel No. 113 at \$267,895.00 and Parcel No. 713 at \$600.00.

## **V BUSINESS DAMAGES**

At the time of the taking, Turfmaster's business had been in operation since February 1994. The facility has operated continuously and uninterrupted in excess of five (5) years at the subject property. Therefore, the business meets the statutory time requirements for business damages. Control Pest Management LLC did not file a business damage report.

### **A. Owners' Business Damage Report**

The owners retained Lloyd Morgenstern, a certified public accountant with Morgenstern, Phifer & Messina, P.A., as its expert on the business damage claim. The expert's written report opined \$598,061.00 in business damages.

### **B. County's Business Damage Report**

The County has retained Gary R. Gerson, a certified public accountant with Gerson, Preston, Robinson & Company, as its expert on the business damage claim. The expert's written report opined \$13,400.00 in business damages.

## **VI BINDING OFFER/STATUS OF THE CASE**

The County's initial offer was \$54,400.00 for Parcel Nos. 112/712 (\$54,000.00 for Parcel No. 112 and \$400.00 for Parcel No. 712). The County's initial offer for Parcel Nos. 113/713 was \$50,000.00 (\$49,500.00 for Parcel No. 113 and \$500.00 for Parcel No. 713).

## **VII ANALYSIS – OFFER OF JUDGMENT**

An offer of judgment is a procedural device that is intended to impose a monetary risk on a party which refuses to accept a reasonable settlement offer. An offer of judgment, when made and accepted, settles the owner's compensation, damages, and statutory attorney's fees; however, it leaves the costs outstanding. Costs would then either be settled or determined by the Court.

If an owner rejects an offer of judgment, it has no impact on settlement or statutory attorney's fees. However, it impacts the property owner's expert costs in two (2) ways:

(1) Expert costs are not reimbursed for time expended after the date of the rejection of the offer of judgment if a verdict or subsequent settlement is less than the offer of judgment amount, and

(2) The owner's experts have their compensation for trial preparation at risk; as a result, the experts may slack off on preparation and be more motivated to control their expenditure of time in trial preparation.

If an offer of judgment is not made, then the owner's experts may be encouraged to run up a tremendous number of hours and prepare hard for trial because reimbursement of costs by the County is limited only by what the court deems reasonable or unreasonable.

The recommended amount of the offer, \$145,000.00, is intended to cover the appraisal and business damage amounts determined by the County's expert, plus an additional sum representing what the owners might reasonably anticipate obtaining by going to trial.

## **VIII ANALYSIS – BUSINESS DAMAGE COUNTEROFFER**

Staff recommends a \$25,000.00 counteroffer in case the jury values disruption to this business in this amount. It is very unlikely that Turfmaster will accept the \$25,000.00 counteroffer to settle business damages. However, by making the counteroffer, the County obtains a potential tactical advantage in dealing with attorney fees later.

Attorney fees for business damage claims are based on the difference between the final judgment or settlement on the claim and the amount of the County's initial counteroffer or the first counteroffer following the disclosure of previously withheld material information. If there is no timely counteroffer within 120 days of the offer or within 90 days of the disclosure of previously withheld material information, the counteroffer is deemed to be zero dollars. The same percentage attorney fee schedule is applied to this difference as is applied to the monetary benefits obtained as to land, improvements and damages.

## **IX RECOMMENDATION**

County staff recommends that the BCC authorize the issuance of an Offer of Judgment in the total amount of \$145,000.00, for Defendants, Stephen G. Kohler, Douglas C. Lee, Turfmaster Lawn & Ornamental Care, Inc. and Control Pest Management LLC, exclusive of statutory interest, attorney's fees and costs reimbursements.

County staff also recommends that the BCC authorize the County Attorney's Office to make a counteroffer to Turfmaster's offer to settle business damages in the amount of \$25,000.00. This request pertains only to business damages.

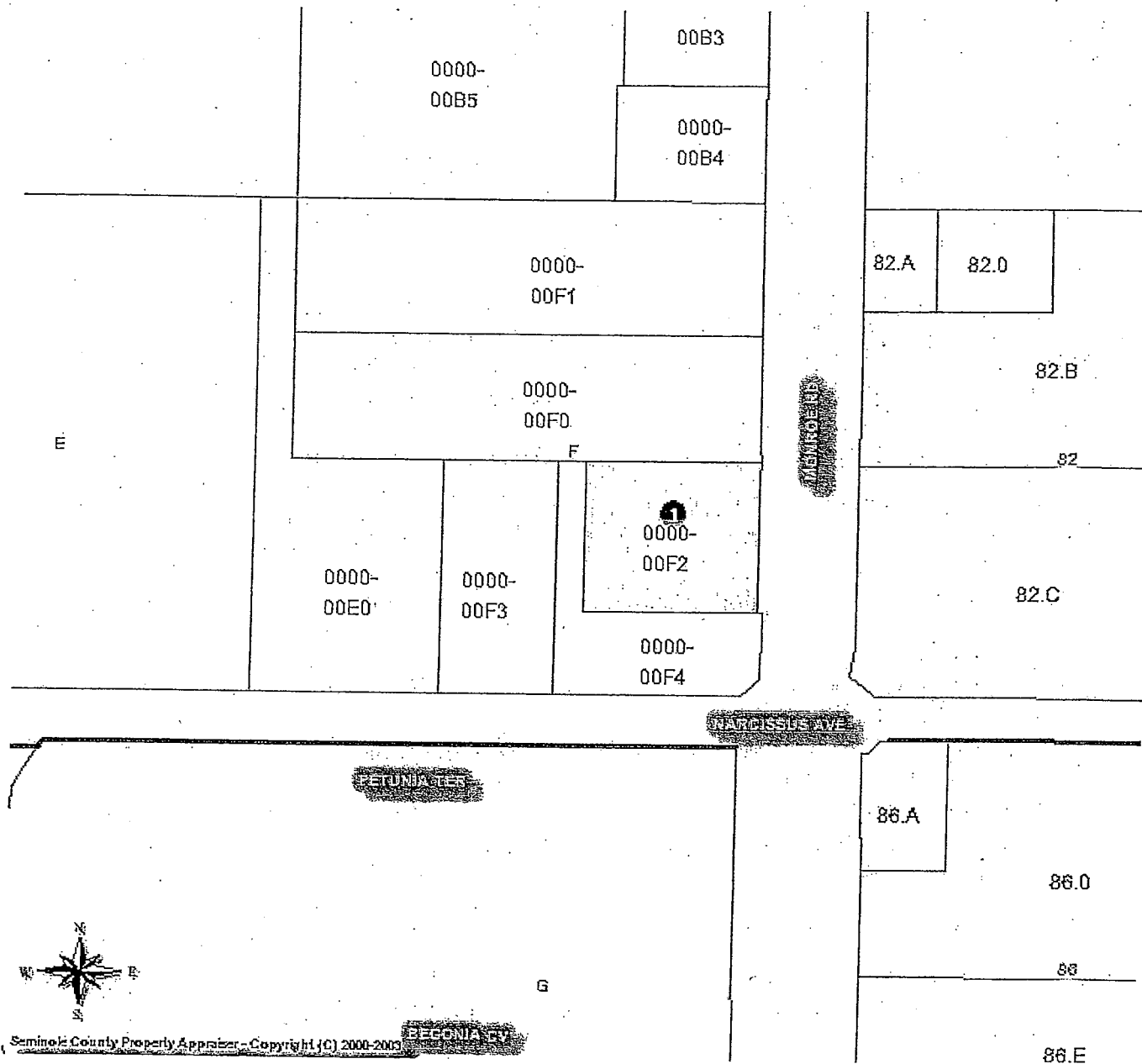
DGS/dre

Attachments

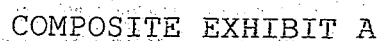
Exhibit A – Location map

Exhibit B – Parcel Sketch

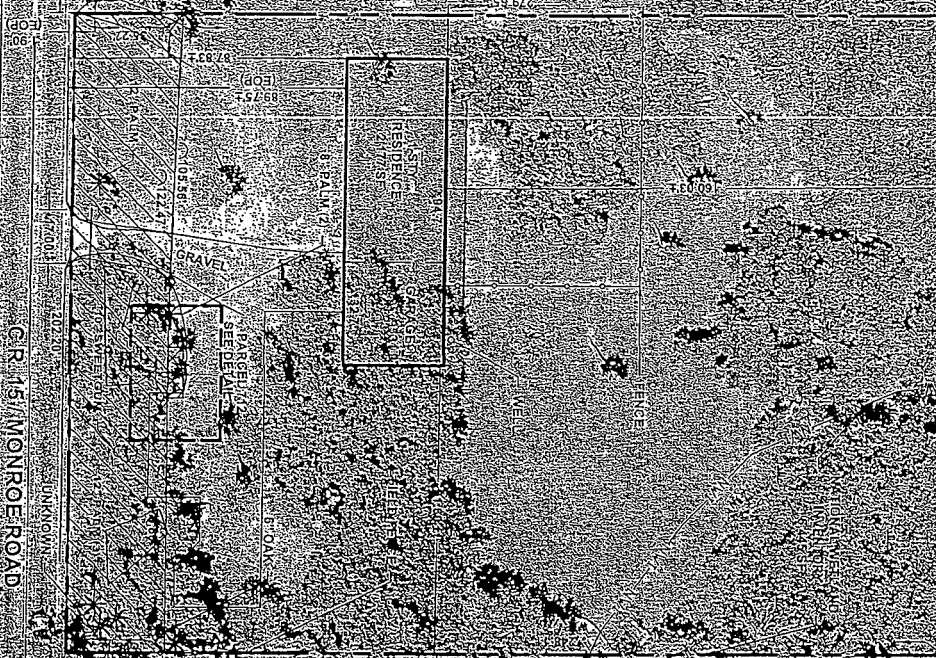
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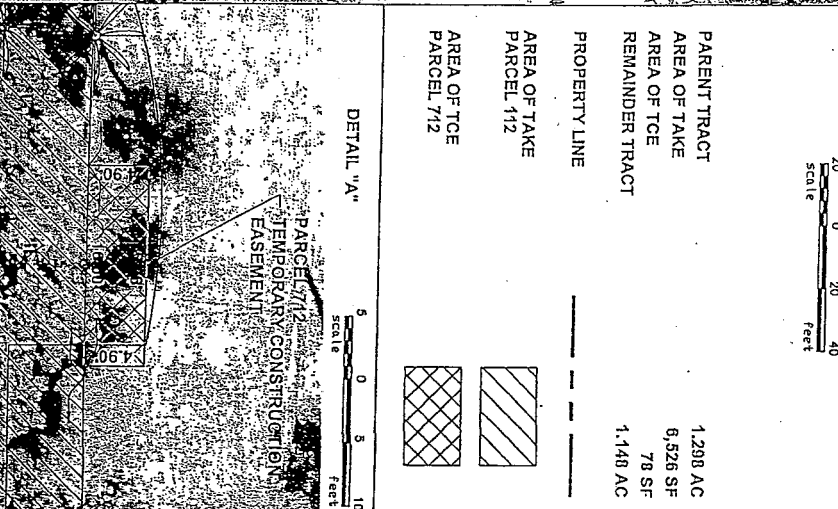
COMPOSITE EXHIBIT A







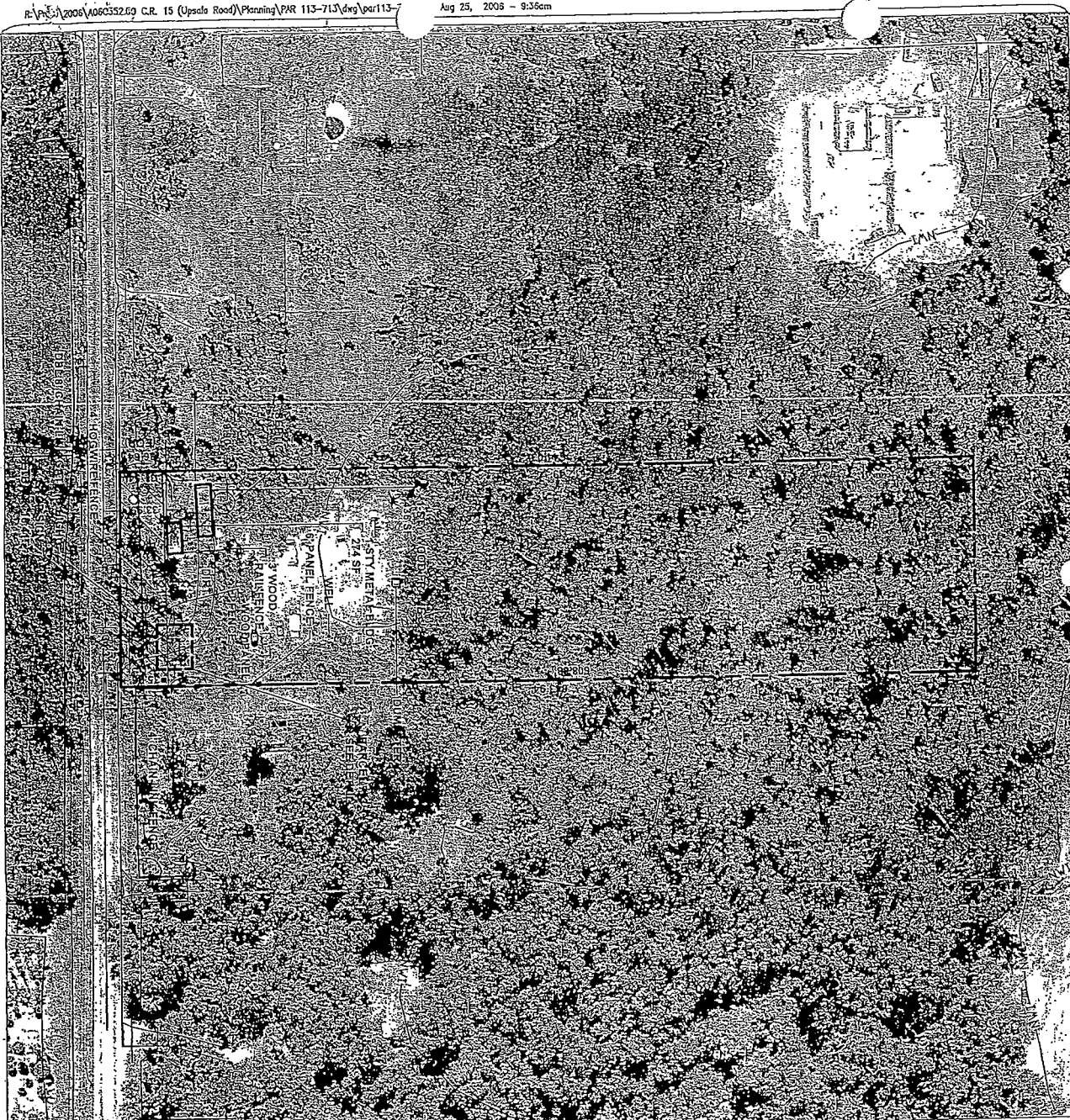
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EXHIBIT B



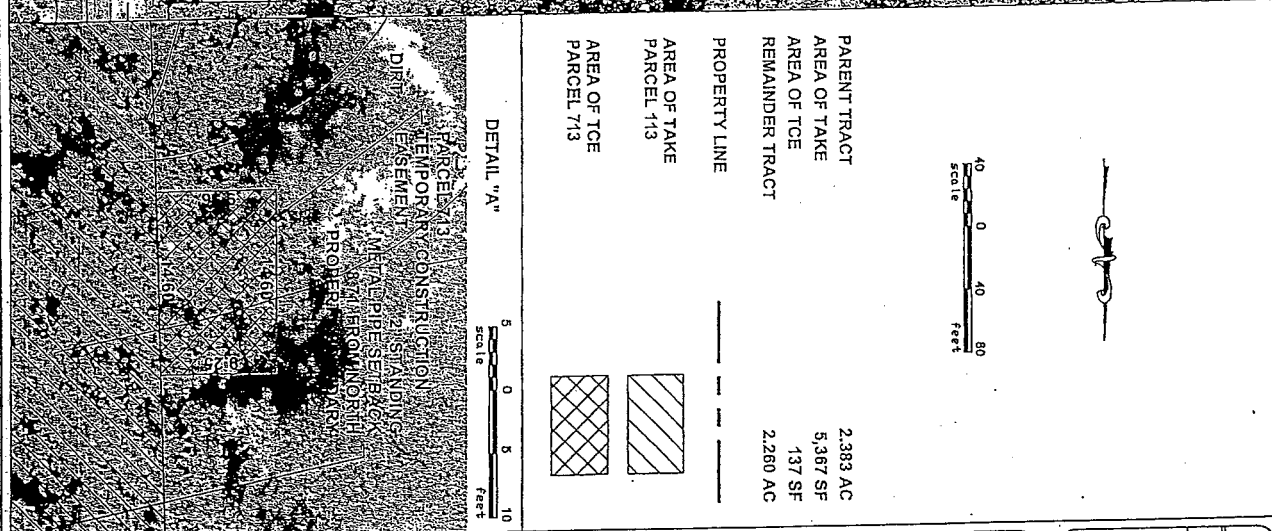
PARENT TRACT : WITH TAKING SHOWN

PARCEL 112/712  
C.R. 15 / MONROE ROAD  
SEMINOLE CO., FLORIDA

2	BLDG. EOP SETBACK	PHP	8/24/0
1	REMOVE MAILBOX	PHP	8/21/0
SCALE AS SHOWN			
DRAWN BY	PHP	APPROVED	DJS
CHECKED	DJS	DATE	08/24/0



COMPOSITE  
EXHIBIT B



PARENT TRACT : WITH TAKING SHOWN

PARCEL 113/713  
C.R. 15 / MONROE ROAD  
SEMINOLE CO., FLORIDA

1	BLDG. ZOP SETBACK	PHP	8/24/06
2	ADD WOOD FENCE	PHP	5/21/06
3	D/W SURFACE	PHP	8/15/06
SCALE AS SHOWN			
DRAWN PHP		APPROVED DCS	
CHECKED DCD		APP. DATE 08/01/06	

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 EB 9015  
 BUREAU  
 PROJECT NUMBER  
 A980352.00  
 FILE NAME: BULB-Z13.dwg